goods, and fails to do so, the vendor may bring an action for breach without alleging or proving tender, but by merely alleging and proving readiness and willingness to perform: *West* v. *Emmons,* 5 Johns. (N. Y.) 179; *Hunter* v. *Wetsell,* 84 N. Y. 549; *Lekas* v. *Schwartz,* 107 N. Y. Supp. 145; *Colvin* v. *Weedman,* 50 Ill. 311; *L. N. A. & C. Ry. Co.* v. *Iron Co.,* 126 Ill. 294; *Weill* v. *American Metal Co.,* 182 Ill. 128; *Lucas* v. *Nichols,* 5 Gray 309; *Weymouth* v. *Goodwin,* 105 Me. 510; *Florence Wagon Works* v. *Kalamazoo Co.,* 144 Ala. 598; *Posey* v. *Scales,* 55 Ind. 282; *Hinckley* v. *Pittsburg Bessemer Steel Co.,* 121 U. S. 264; *Bell* v. *Hatfield,* 121 Ky. 560. But see *Blish Milling Co.* v. *Ditherage,* 155 Ky. 319, contra.

WILLS—BURDEN OF PROOF AS TO DUE EXECUTION.—In an action to resist the probate of a will, brought under § 3154 of the Indiana Code, an instruction placing the burden of proof of due execution and testamentary capacity on the proponents was held to be correct. (COX, C. J. and ERWIN, J. dissenting. *Herring* v. *Watson* (Ind. 1914), 105 N. E. 900.

The prevailing opinion is based upon the decision of the Indiana Court in the case of *Steinkuehler* v. *Wempner,* 169 Ind. 154, 81 N. E. 482, 15 L. R. A. (N. S.) 673, and the case of *McReynolds* v. *Smith,* 172 Ind. 336, 86 N. E. 1009. These cases are, however, not authority for the decision in the principal case because they were cases arising on objections filed in the Probate Court under § 3153 of the Code. The Supreme Court of Indiana has held that in a proceeding under § 3154, such as in the principal case, which section provides for the filing of a petition in the Circuit Court to either resist or set aside probate, it is immaterial, so far as procedure is concerned, whether the will has been admitted to probate or not. *Curry* v. *Brateny,* 29 Ind. 195. If the decision in the latter case is correct, the conclusion in the principal case is incorrect in not drawing the distinction between actions under the different sections of the Code, and in relying on cases which were decided under a different section. The cases relied upon expressly recognize the rule that after probate the burden is on the contestant, and this has clearly been the Indiana doctrine for a great number of years supported by the following authorities: *Moore* v. *Allen,* 5 Ind. 521; *Turner* v. *Cook,* 36 Ind. 129; *Teegarden* v. *Lewis,* 145 Ind. 98, 40 N. E. 1047; *Roller* v. *Kling,* 150 Ind. 159, 49 N. E. 948; *Wait* v. *Westfall,* 161 Ind. 648, 68 N. E. 271. And this seems to be the correct rule. See WIGMORE, EVIDENCE, §§ 2500, 2502, and cases there cited.

WILLS—CONSTRUCTION—ILLEGITIMATE CHILDREN.—Testator devised property to trustees with directions to divide into four equal portions and pay one-fourth of the total income to each of his four children, two of whom were daughters, during their lives, at the death of any of them, whether before or after the death of the testator "to pay to each of the children of such deceased daughter an equal portion of her share, discharged of said trust; the lineal descendants of any deceased child to take the part of such share as their parent would have taken if alive." One daughter died leaving a legitimate daughter and also an illegitimate son of an illegitimate daugh-

ter. *Held,* the illegitimate son of the illegitimate daughter would take one-half of his grandmother's share under this devise, (WHEELER, J., dissenting). *Eaton* v. *Eaton* (Conn. 1914), 91 Atl. 191.

This decision is based on the former holdings of the Connecticut courts, contrary to the common law doctrine (1 BLACK. COMM. 459) that an illegitimate child could inherit through its mother. *New Haven* v. *Newton,* 12 Conn. 178; *Woodstock* v. *Hooker,* 6 Conn. 35; *Anderson's Appeal,* 42 Conn. 491, 19 Am. Rep. 553; *Brown* v. *Dye,* 2 Root 280; *Heath* v. *White,* 5 Conn. 228. But it would seem that the court is against the weight of authority in holding that the word "children" as used in the above bequest should include illegitimates, even though an illegitimate child may inherit in that state. *Hawkins* v. *Jones,* 19 O. St. 22; *Flora* v. *Anderson,* 67 Fed. 182, reaffirmed, 75 Fed. 217; *United States Trust Co.* v. *Maxwell,* 57 N. Y. Supp. 53, 26 Misc. Rep. 276; *Bealfeld* v. *Slarghenkupt,* 213 Pa. 565, 62 Atl. 1113; *In Re Sholls Estate,* 100 Wis. 650, 76 N. W. 616; *Central Trust Co. of N. Y.* v. *Skillin,* 138 N. Y. Supp. 884, 154 App. Div. 227. The above cases hold that under a statute providing that an illegitimate child may inherit from the mother, such a child does not take under a devise to "children, issue, son" and words of like character. The common law doctrine had always been that children means legitimate children. *Cartwright* v. *Vawdry,* 5 Ves. 530; *Wilkinson* v. *Adams,* 1 Ves. & B. 422; *Warner* v. *Warner,* 15 Jur. 141; *Bowers* v. *Bowers,* 1 Abb. Dec. 226.